



United States
Environmental Protection
Agency - Region 2

Water Management Division
Marine & Wetlands
Protection Branch

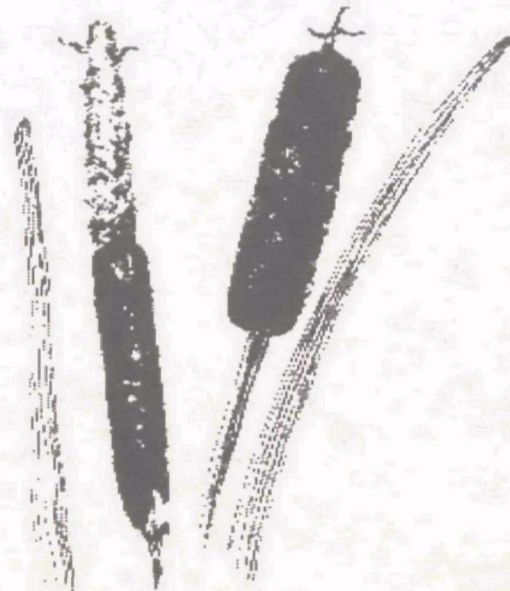
December 1993
EPA-902-R-93-004

WETLANDS

REGULATION GUIDEBOOK
FOR
NEW YORK STATE

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Copies of the
Wetlands Regulation Guidebook
can be received by contacting:

U.S. Environmental Protection Agency, Region 2
Marine and Wetlands Protection Branch
26 Federal Plaza
New York, NY 10278
(212) 264-5170

TABLE OF CONTENTS

ACKNOWLEDGMENTS	iv
NOTE TO THE READER	v
WHAT IS A WETLAND?	1
WETLAND VALUES AND FUNCTIONS	2
ALTERNATIVES TO WETLAND ALTERATION	6
HOW WETLANDS ARE REGULATED	7
HOW TO USE THIS GUIDE	9
FEDERAL REGULATIONS	15
CLEAN WATER ACT - SECTION 404	15
CLEAN WATER ACT - SECTION 401	22
OTHER RELATED FEDERAL LAWS AND POLICIES	24
STATE REGULATIONS	29
FRESHWATER WETLANDS ACT	29
ADIRONDACK PARK AGENCY ACT	31
TIDAL WETLANDS ACT	32
WATERFRONT REVITALIZATION ACT	33
STATE ENVIRONMENTAL QUALITY REVIEW ACT	35
OTHER RELATED STATE LAWS AND POLICIES	39
GLOSSARY	43
LIST OF ACRONYMS	46
IMPLEMENTING AGENCIES	47

ACKNOWLEDGMENTS

The concept for this booklet originated with and was first implemented by
the Washington State Department of Ecology.

We thank that agency for kindly providing us their materials for our use.

We also thank the United States Army Corps of Engineers,
the New York State Department of Environmental Conservation,
and the Adirondack Park Agency for their review of this document.

NOTE TO THE READER

Numerous federal and state laws affect the use and protection of wetlands. Because no single one of these laws was specifically designed as a comprehensive policy for wetlands management, understanding how and when the various laws and levels of regulation apply can be somewhat confusing.

The purpose of this guidebook is to provide planners, developers, and the general public with an introduction to the scope and application of existing laws and regulations that directly or indirectly affect wetlands in New York State. **As such, this guidebook is not a legal document and should not be considered as the final word on any of the laws or requirements presented.**

A variety of agencies implement wetland related laws. These agencies are referenced throughout this document. The reader should always contact the appropriate local, state, or federal agencies for complete, up-to-date information of that agency's responsibility over wetland areas and for all the regulatory requirements pertaining to a particular activity. Addresses and contacts for the implementing agencies appear in the back of this document.

We welcome any comments on how we can improve the usefulness of this guidebook. Please send your written comments to:

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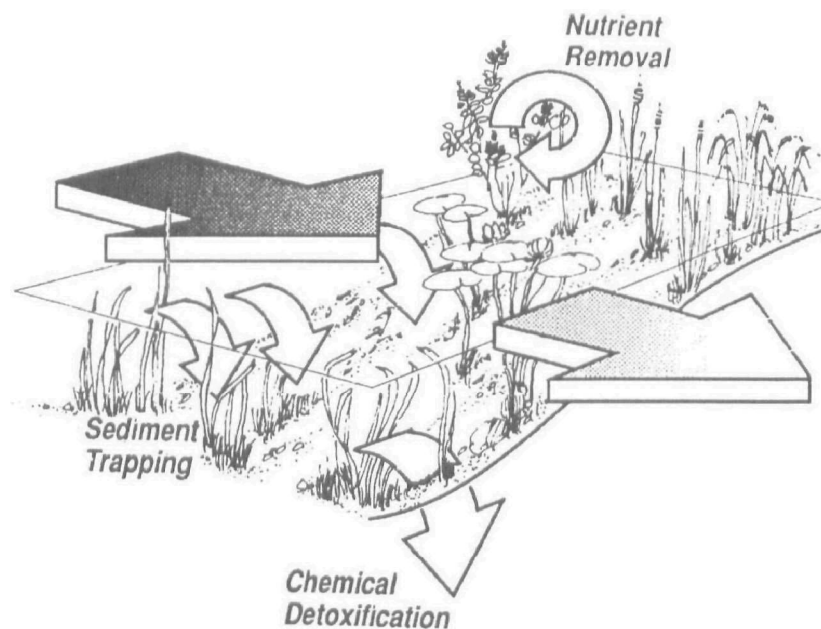
WETLAND VALUES AND FUNCTIONS

Many people have viewed wetlands simply as unimportant, useless lands that could be improved in value by draining or filling. Recent efforts, however, to preserve and protect wetlands are motivated largely by a greater appreciation for the many important ecological, social, and economic functions that wetlands perform. These functions vary from wetland to wetland, but include providing water quality protection, flood control, shoreline stabilization, contributions to ground water and stream flows, and wildlife and fisheries habitat. Also, many people value wetlands as natural areas providing aesthetic, recreational, and educational opportunities that should be preserved for future generations.

WATER QUALITY PROTECTION

Many pollutants are washed by rainfall from urban or agricultural lands and are carried overland to water bodies. Pollutants include soil particles, fertilizers, pesticides, heavy metals, and grease and oil from cars and trucks. Wetlands can improve water quality by removing pollutants from surface waters. Three pollutant removal processes provided by wetlands are particularly important: sediment trapping, nutrient removal, and chemical detoxifica-

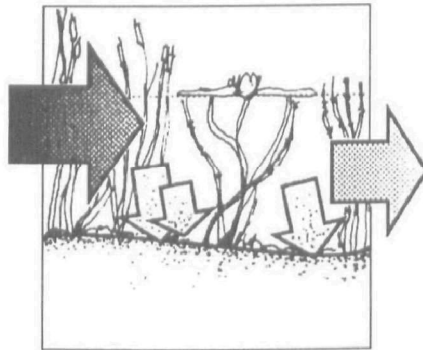
tion. The degree to which wetlands perform these useful functions is influenced by the characteristics of the wetland and environmental circumstances. Wetlands are detrimentally impacted by pollutant levels beyond their capacity for filtration and biological conversion.



SEDIMENT TRAPPING

Runoff flowing through a wetland is slowed by the flatter wetland topography and the resistance of wetland plants. As the water slows down, the runoff drops many of the soil particles (sediment)

Sediment Trapping



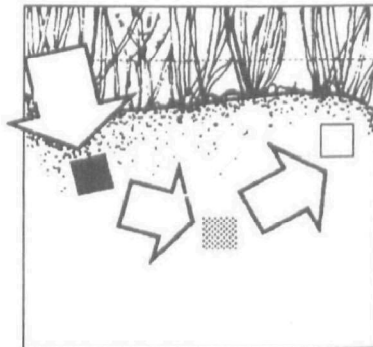
that it is carrying. The roots of wetland plants can then bind the accumulated sediments. Sediments not trapped from runoff often settle in stream beds where they clog gravel beds and prevent fish spawning. They can also fill navigational channels, increasing the need for dredging.

Also, because many pollutants such as heavy metals are attached to soil particles, the settling of sediments in wetlands further improves water quality.

CHEMICAL DETOXIFICATION

Some of the pollutants carried into a wetland in runoff are trapped along with settled soil particles. Some of these pollutants may be buried in the

Chemical Detoxification

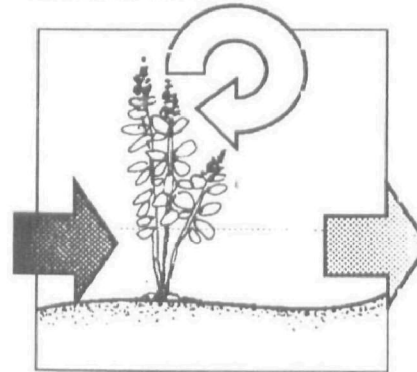


sediments, while others may be converted to less harmful chemical forms by biochemical processes. Still other pollutants may be taken up by plants and either recycled within the wetland or transported from it.

NUTRIENT REMOVAL

Certain forms of nitrogen and phosphorus stimulate plant growth. An over abundance of these nutrients in lakes and ponds can promote excess plant and algal growth, resulting in a degradation of water quality. If these nutrients enter wetlands from surrounding areas, they may accumulate within the soils of the wetland. Microorganisms in the wetland soils then convert some nutrients into less harmful forms. Other nutrients may be taken up by wetland plants and converted to plant materials. When wetland plants die and decay, nutrients are recycled within the wetland.

Nutrient Removal



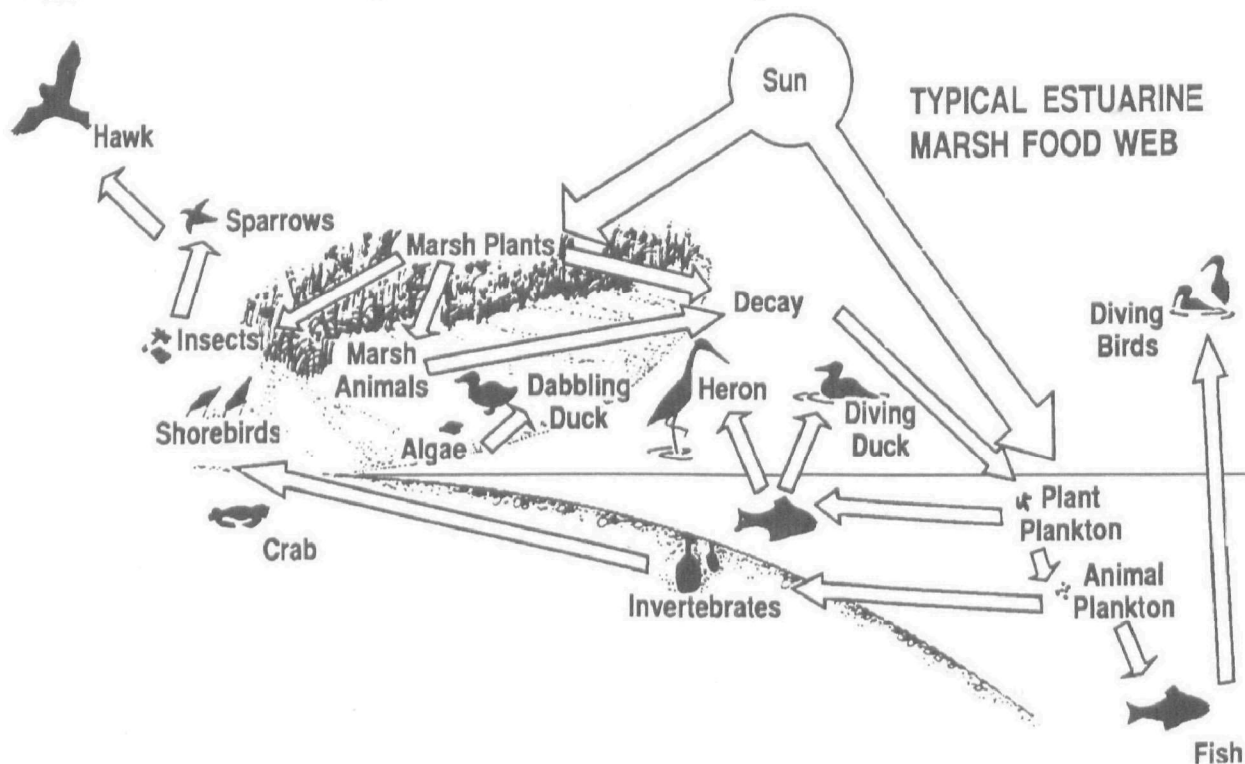
WILDLIFE AND FISHERIES HABITAT

Wetlands provide essential habitat and food for numerous fish and wildlife species. Many animal species, including waterfowl and freshwater and saltwater fish, require wetland habitat for breeding, nesting, or rearing of their young, as well as for resting, migration, or overwintering areas. About forty-five percent of the species listed by the federal government as threatened or endangered depend on wetlands during some part of their life cycle.

Coastal wetlands and some types of inland, freshwater marshes exhibit very high rates of plant productivity, in the conversion of energy from the sun into plant materials. This high productivity often supports a varied and complex food web both

within and outside the wetland. For instance, only a small amount of the plant material produced in coastal salt marshes is eaten by animals during the growing season. When the marsh plants die, much of this dead plant material is broken down into small particles and flushed into adjacent waters. There it becomes a potential food source for plankton, fish and other estuarine organisms.

In addition to serving as a food source, the dense vegetation found in many wetlands provides places for wildlife to build homes and hide from predators. While many species live in wetlands year round, others, such as striped bass, use wetlands for a part of their life cycle or during certain times of the year.



ALTERNATIVES TO WETLAND ALTERATION

It is usually easier and less expensive to avoid wetland alteration than to obtain the required federal, state, and local permits.

When wetlands are not adequately taken into consideration in the course of project design, development activities that affect wetlands may be costly in terms of time, environmental impact assessment, and required mitigation. In many cases, the burden of proof that a project meets the conditions for permit approval rests with the applicant, and may result in the need for extensive technical analysis. It may be to the applicant's greater benefit to research and implement a project proposal that avoids wetlands.

There are a variety of alternatives for protecting wetlands that benefit both society and the individual property owner. Benefits for property owners include completing projects faster, more easily and for lower cost, gaining potential tax benefits, as well as the satisfaction of having protected a valuable natural resource.

Some local governments have adopted provisions that allow tradeoffs between the preservation of natural areas (such as wetlands) and densities of development. Examples include "planned unit development" and "clustering" provisions in local land use ordinances.

In many cases, retaining wetlands as open space within development increases the value of the property for future residents or employees. City and county planning departments can discuss local regulations and options pertaining to wetland protection.

Many new organizations have become involved in purchasing or accepting donations of private land and managing such lands in their natural state. In some instances, lands are transferred to government agencies that will protect them. While federal and state governments own and manage many acres of wetlands, most remaining wetlands are privately owned. In many cases, transfers of land to a public or private conservation group may have tax benefits for the property owner.

Guidance on avoiding wetland impacts can be discussed with municipal officials. In addition, representatives of the New York State Department of Environmental Conservation (DEC), the Adirondack Park Agency (APA), and the U.S. Army Corps of Engineers (Corps) are available to discuss options for avoiding project impacts to wetlands (see "Implementing Agencies" for phone numbers).

HOW WETLANDS ARE REGULATED

A variety of federal, state, and local regulations affect construction and other activities in wetlands and in areas immediately adjacent to wetlands. In addition, the types, sizes, and locations of wetlands included in the regulations vary from law to law. As a result, case-by-case review is needed, and applicants are advised to contact the appropriate agencies prior to project development. Contacting the New York State Department of Environmental Conservation, Adirondack Park Agency, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency (EPA), and local government will provide the best start. For larger projects, landowners may elect to hire an environmental consulting firm to coordinate the permitting process.

The tables and figures in the subsequent pages help in identifying the jurisdiction of the principal federal and state laws that regulate activities in or near wetlands.

FEDERAL REGULATIONS

The principal federal laws that regulate activities in wetlands are Sections 404 and 401 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act. Other federal laws include the National Environmental Policy Act, the Coastal Zone Management Act, and the Swampbuster provision of the Food, Agriculture, Conservation and Trade Act of 1990.

STATE REGULATIONS

The principal New York State regulations affecting development activities in and near wetlands include the Freshwater Wetlands Act, the Tidal Wetlands Act, and the Adirondack Park Agency Act. Administration of the Tidal Wetlands Act rests solely with the DEC. The Freshwater Wetlands Act is administered by the DEC in all of New York state outside of the Adirondack Park. Inside the Adirondack Park, the Adirondack Park Agency administers both the Freshwater Wetlands Act and the APA Act. Other state laws that may apply to activities in or near wetlands include the State Environmental Quality Review Act (SEQRA), the Waterfront Revitalization of Coastal Areas and Inland Waterways Act, the Coastal Erosion Hazard Areas Act, and the Use and Protection of Waters Program. In addition, the New York Uniform Procedures Act applies to procedural aspects of the review and permitting processes. Also, the DEC administers the Water Quality Certification program pertaining to Section 401 of the Clean Water Act, which requires state certification that federal permits meet state water quality standards.

LOCAL REGULATIONS

Many local governments in New York also have provisions in ordinances and other regulations that affect projects proposed in or adjacent to wetlands. Because there is considerable variation in the provisions of these local regulations, it is necessary to contact the appropriate local government department to determine the local provisions that affect a particular wetland. In some cases, local regulations may cover wetlands not covered by federal and state regulations, and may be more restrictive than those of federal or state regulations. Please note, that even when local laws are less restrictive, projects must comply with state and federal laws.

As of 1975, the New York State Freshwater Wetlands Act allowed local governments to assume jurisdiction for regulating wetlands wholly or partially within their boundaries. Local wetland protection laws or ordinances may simply adopt the state law, or may strengthen the law (for example, by protecting smaller wetland areas). However, no local law or ordinance can be adopted that is less protective of freshwater wetlands than is the state Freshwater Wetlands Act. To date, three local governments have taken over the state program.

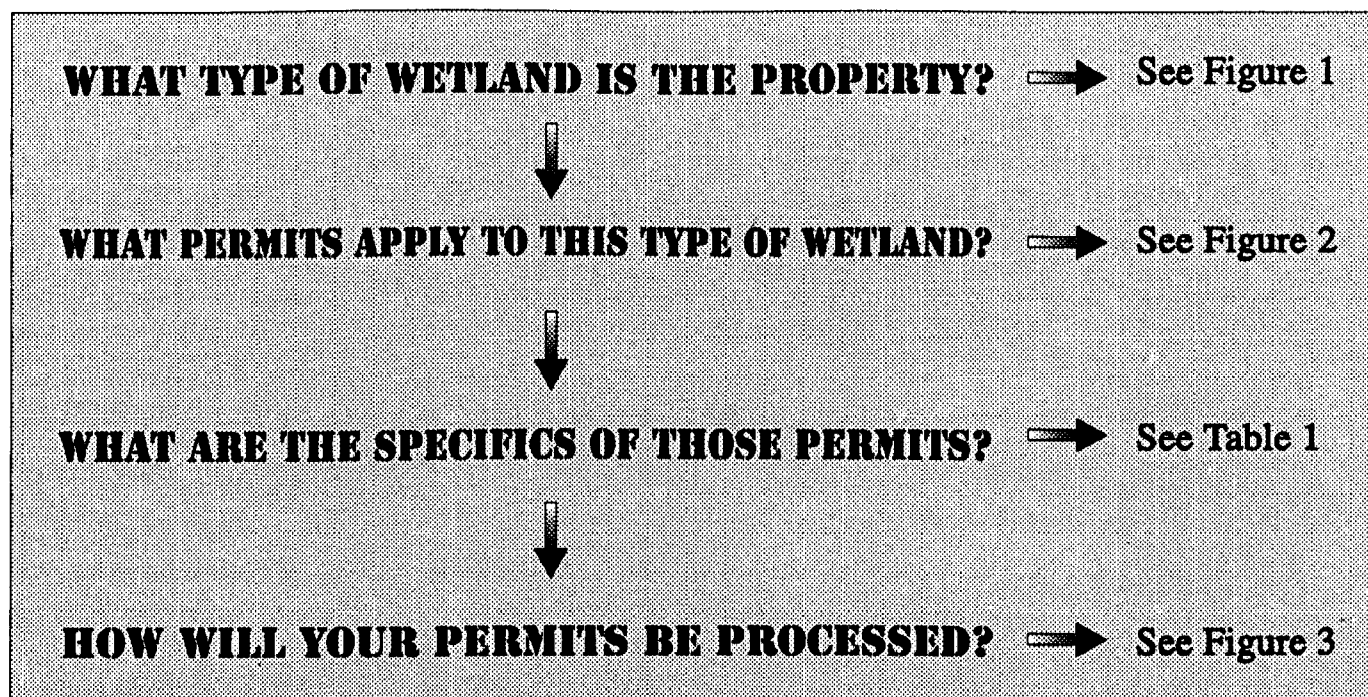
Wetlands may be regulated by additional ordinances, such as sensitive areas or clearing and grading ordinances. Special analysis and review may be required for projects affecting wetlands covered by local sensitive areas ordinances. Such policies and regulations may regulate wetlands and/or activities that are not covered under state and federal laws.

Other local mechanisms that may be used to regulate developments affecting wetlands include comprehensive plans, zoning ordinances, and floodplain management regulations. Local planning and public works agencies can assist project proponents in determining local requirements.



HOW TO USE THIS GUIDE

The graphics and tables on the following pages are designed to help you determine what permits may be required for your project, provide an overview of the major permit requirements, and give a general idea of the sequencing and interrelationships of permits. The flow chart below will guide you to the appropriate information.



WETLAND JURISDICTION

Jurisdiction refers to the extent or range of authority given by a regulation. Understanding the jurisdiction of the federal and state regulations applicable to a particular wetland may be confusing. The accompanying figures assist in determining the jurisdiction of the principal state and federal regulations for various wetland types and topographic locations. However, permit requirements vary depending on the type of activity proposed and the specific wetland situation. Always contact the appropriate regulatory agency for clarification if you are not sure about permit requirements. Navigable waters refers to all presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean high water in tidal water and up to ordinary high water in freshwater areas.

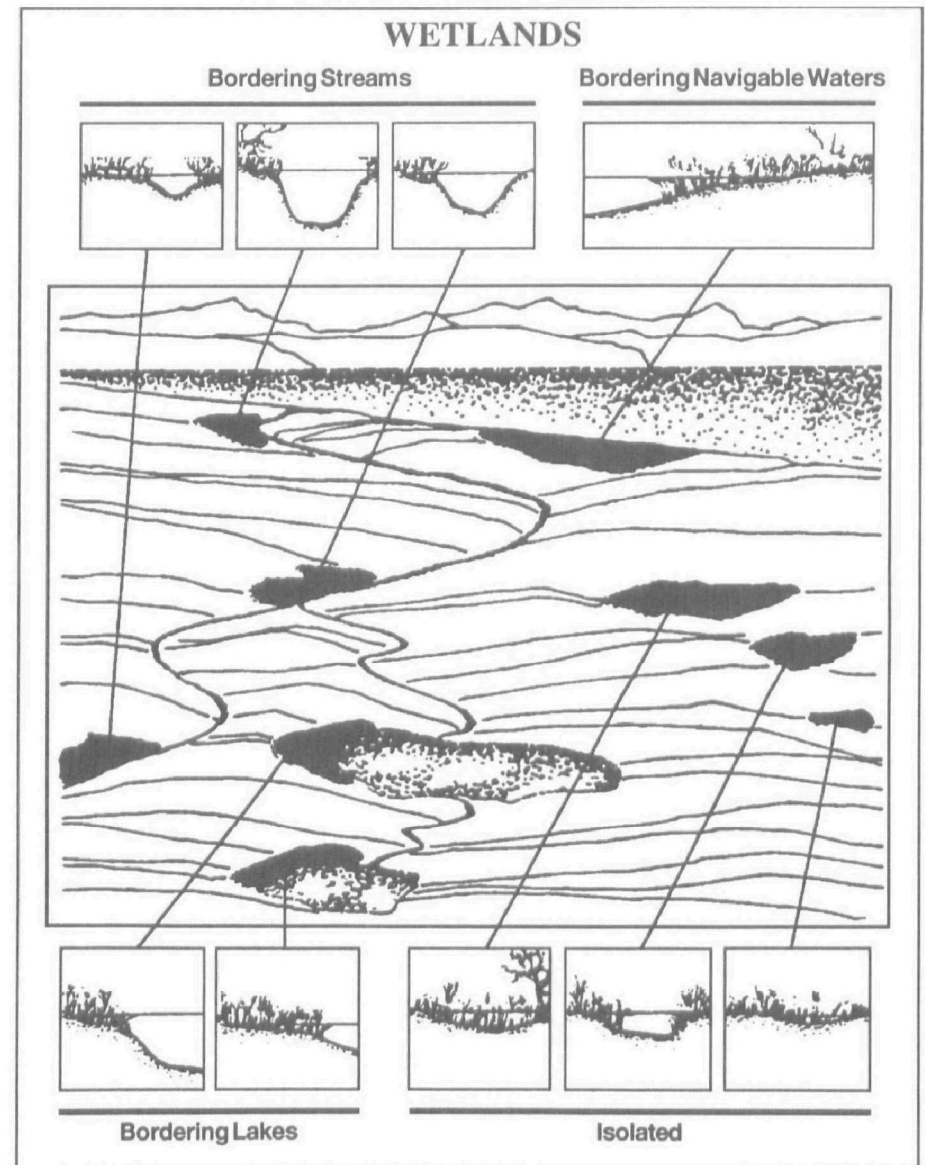



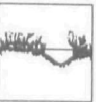

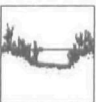

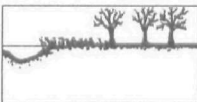









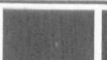
























FIGURE 1

FIGURE 2


WETLAND SITUATION									
		Bordering Navigable Waters	Bordering Streams			Isolated			Adjacent Areas
									
			> 5 cfs	< 5 cfs		> 10 acre	1-10	< 1 acre	100 ft fresh 300 ft tidal
PERMITS REQUIRED									
Rivers and Harbors Act Section 10									
Clean Water Act Section 404 Individual Permit									
Clean Water Act Section 404 General Permit									
State Freshwater Wetlands Act									
Use and Protection of Waters Program									
Tidal Wetlands Act									
Waterfront Revitalization of Coastal Areas and Inland Waterways Act									
Coastal Erosion Hazard Areas Act									






Direct Authority

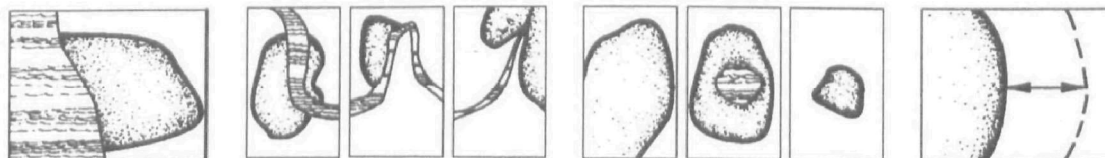


Discretionary Authority



If mapped on the
New York State
Freshwater
Wetlands Maps
or designated by
DEC or APA

	Direct Authority
	Discretionary Authority
	If mapped on the New York State Freshwater Wetlands Maps or designated by DEC or APA



WETLANDS REGULATION GUIDEBOOK

TABLE 1. OVERVIEW OF MAJOR REGULATIONS PERTAINING TO WETLANDS IN NEW YORK

Regulation	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency	Reference Page
Federal Clean Water Act, Section 404	Requires permit for discharge of dredged or fill materials, including excavation activities and placement of pilings, as defined.	Waters of the United States.	Includes all wetlands (with some exceptions).	U.S. Army Corps of Engineers, U.S. Environmental Protection Agency	15
Federal Clean Water Act, Section 401	Requires, as a condition of federal permit approvals, state certification that federal permit meets state water quality standards.	Federal permits affecting waters of the state.	Includes all wetlands that may be affected by a federally permitted activity.	New York State Department of Environmental Conservation	22
Federal Rivers and Harbors Act, Section 10	Requires permit for all construction activity in navigable waters.	Navigable waters to mean high water mark of tidal waters, and ordinary high water mark of fresh waters.	Wetlands to the limits of navigable waters.	U.S. Army Corps of Engineers	24
Federal Coastal Zone Management Act	Requires notice of consistency with the state coastal zone management plan as a condition of federal activities, federal license approvals, and federal support of local activities.	New York's coastal counties and along lakes Erie and Ontario, St. Lawrence and Niagara Rivers, Hudson River south of Troy Dam, East and Harlem Rivers, Kill Van Kull, and Arthur Kill.	Wetlands within the coastal areas of New York State.	New York State Department of State	24
Food, Agriculture, Conservation, and Trade Act of 1990 (Farm Bill)	The Swampbuster provision denies eligibility for all U.S. Dept. of Agriculture farm program benefits to those who convert a wetland by draining dredging or filling.	Areas considered wetland according to the Soil Conservation Service's designation.	Wetlands that have not been converted to agricultural use prior to December 23, 1985.	Agricultural Stabilization and Conservation Service	26
National Environmental Policy Act (NEPA)	Requires full disclosure of potential impacts associated with proposed federal actions.	All major federal actions.	All wetlands.	Varies with the proposed action; lead agency is usually the federal agency issuing the permit	25

WETLANDS REGULATION GUIDEBOOK

TABLE 1 (cont.). OVERVIEW OF MAJOR REGULATIONS PERTAINING TO WETLANDS IN NEW YORK

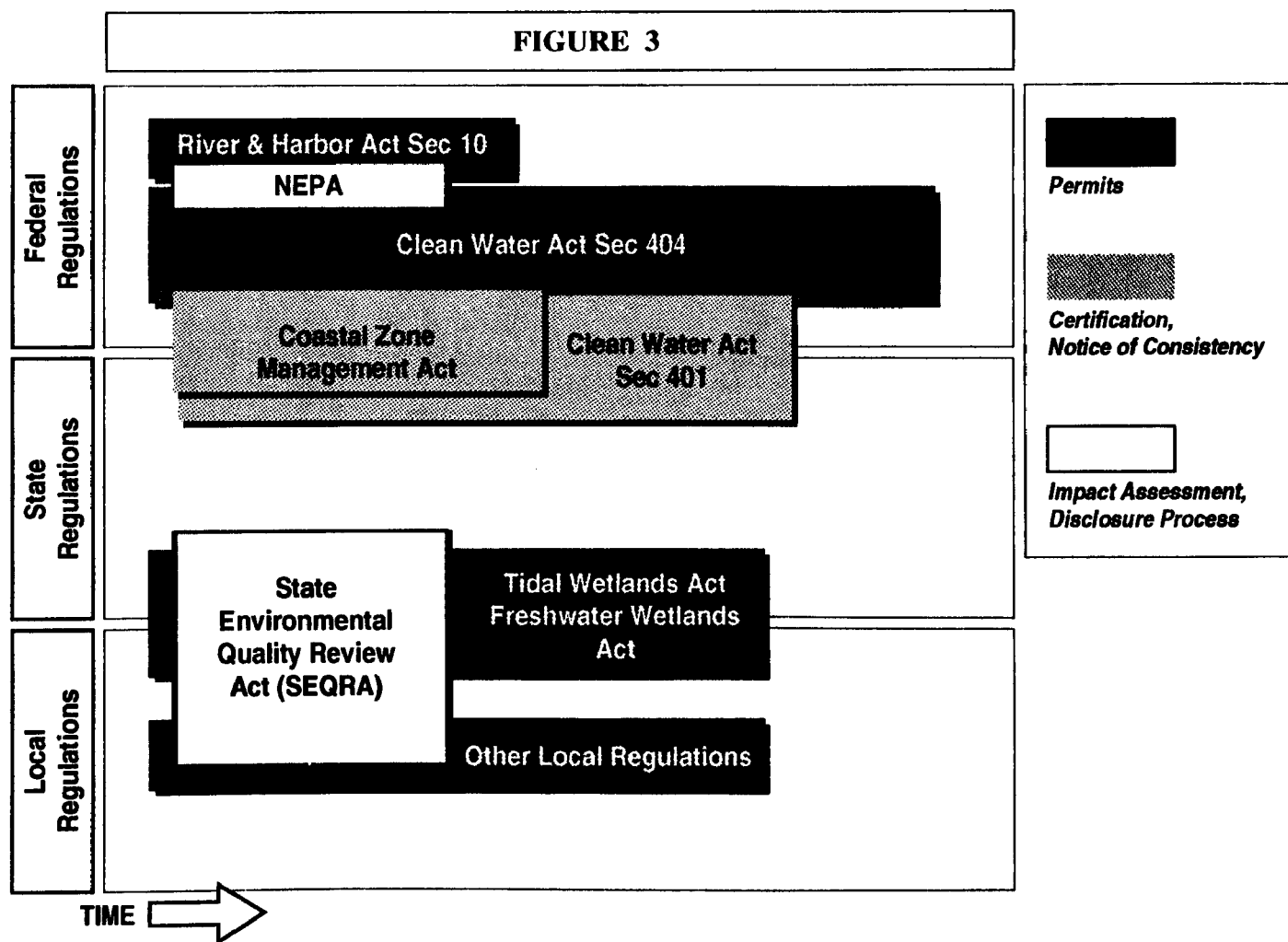
Regulation	Implementation	Jurisdiction	Application to Wetlands	Implementing Agency	Reference Page
New York State Freshwater Wetlands Act	Protects freshwater wetlands and requires a 100ft adjacent buffer area.	All wetlands shown on New York State Freshwater Wetlands Maps, and as designated by the DEC and the APA.	Wetlands of 12.4 acres or greater in size, or smaller wetlands of unusual local importance. Within the Adirondack Park: wetlands of one acre or greater, and less than one acre if adjacent to open water.	New York State Department of Environmental Conservation, Adirondack Park Agency	29
Use and Protection of Waters Program	Protects the bed and banks of water bodies.	Navigable and protected waters of the state.	The excavation or placement of fill in navigable and protected waters of the state including adjacent wetlands requires a permit.	New York State Department of Environmental Conservation	39
New York State Tidal Wetlands Act	Protects tidal wetlands and adjacent areas.	All wetlands as shown on the New York State Tidal Wetlands Inventory Maps and as designated by DEC.	Coastal fresh, intertidal marsh; coastal shoals, bars, flats; littoral zone; high marsh, salt meadow, formerly connected salt marshes; and uplands within 300ft of wetlands.	New York State Department of Environmental Conservation	32
New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act	Oversees all permit activities in the state's coastal waterways and adjacent shorelines and in some inland waters.	All federal, state, and local actions within coastal areas of New York State.	All wetlands affected by actions within coastal areas.	New York State Department of State	33
Coastal Erosion Hazard Areas Act	Protects Natural Protective Features and Structural Hazard Areas along coastal and Great Lakes waters.	All coastal areas of the Marine District, and the Great Lakes and associated waters.	Wetlands within regulated Natural Protective Features and Structural Hazard Areas.	New York State Department of Environmental Conservation	40
State Environmental Quality Review Act (SEQRA)	Requires, through state process, the full disclosure of potential impacts associated with proposed actions.	All federal, state, and local actions, including permit issuance, within New York State.	All wetlands affected by actions, except those actions specifically exempted or excluded.	Lead Agency (determined by nature of proposed action)	35

PERMITTING SEQUENCE

Completion of the permit processes that apply to a particular project can take from a few months for small projects to more than a year for complex projects.

The chart below shows the relative timing of

major permit and related activities. One or more of these permits may be required. For more information, see Figure 2, Table 1, and a more detailed description of regulations in the text following.



FEDERAL REGULATIONS

In this section, federal laws and regulations that affect the use of wetlands are described in more detail. Particular focus is given to Sections 404 and 401 of the federal Clean Water Act.

CLEAN WATER ACT SECTION 404

PURPOSE

The primary goal of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Section 404 is specifically directed toward regulating discharges of dredged or fill material into waters of the United States, including wetlands (see definition in sidebar). Other pollutants are regulated by the U.S. Environmental Protection Agency under Section 402 of the CWA.

IMPLEMENTATION

Section 404 provides for government and public review and comment on projects that propose to alter or destroy waters of the United States by filling, including any soil movement, or disposal of dredge material. A permit program is used to administer the provisions of Section 404. Within this permit program, the U.S. Army Corps of Engineers issues or denies Department of the Army permits for the discharge of dredged or fill material into wetlands. The definition of "discharge of

dredged material" has been recently modified to address and regulate certain types of excavation activities including mechanized landclearing, ditching, channelization, and other activities that destroy or degrade waters of the United States (Federal Register at 58 FR 45008). Also, the definition of "fill material" has been modified to recognize that the placement of pilings can have the effect of fill material and require a Department of the Army permit.

EPA has developed environmental guidelines by which permit applications must be evaluated, known as the Section 404(b)(1) guidelines. Proposed actions requiring a permit must comply with these guidelines. If a project does not comply with the 404(b)(1) guidelines, the permit application must be denied by the Corps. The Corps may direct the project to be modified to minimize impacts, or require that applicants create or restore wetlands to compensate for unavoidable project impacts. In some cases, an Environmental Impact Statement (EIS) may be required prior to permit issuance.

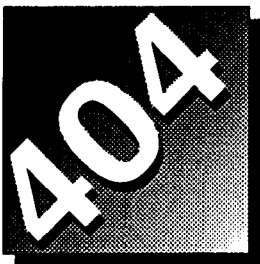
EPA has authority under Section 404(c) to prohibit, withdraw, or restrict the placement of dredged or fill material into wetlands and veto a permit issued by the Corps. Enforcement actions may be brought by the Corps or the EPA against those who discharge dredged or fill material into wetlands without, or in violation of, a Department of the Army permit.

PROVISIONS OF THE LAW

Under the law, activities in wetlands may

The Corps and EPA have amended their permit regulations, defining discharges of dredged and fill material to include incidental discharges associated with excavation activities and clarifying when the placement of pilings is considered to be a discharge of fill material. The final rule was published in the Federal Register at 58 FR 45008.

The Section 404(b)(1) guidelines were developed by the EPA for use by the Army Corps of Engineers in determining the suitability of a discharge activity. The guidelines' provisions discourage avoidable impacts to wetlands and require mitigation for any unavoidable adverse impacts.



Wetlands are:

"... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

[40 CFR 230.3(t)]

To implement this definition, EPA and the Corps use a multi-parameter approach that requires the presence of wetland vegetation, hydrology, and soils.

Waters of the United States means:

1. all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. all interstate waters including interstate wetlands;

3. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:

(continued on right sidebar)

either be: 1) subject to an individual permit, 2) covered under the provisions of a general permit, or 3) exempt from regulatory requirements. Some activities, having minimal impact on wetlands, have been given blanket authorization under the provisions of a general permit issued by the Corps. General permits may pertain to a geographical region or the entire nation, or to particular water body characteristics. Special conditions may apply to general permits. Activities which are exempt from regulation do not require authorization from the Corps. However, it is advisable to contact the Corps to determine the applicability of an exemption for a particular activity. It is important to note that proposed activities may be subject to other laws even if exempted or covered by a general permit. When a project involves an especially valuable ecological area, the District Engineer can exercise discretionary authority to require an applicant to obtain an individual permit, rather than the authorization of a general permit.

INDIVIDUAL PERMITS

With the exceptions noted in the remainder of this section, proposals to modify wetlands require issuance of an individual Department of the Army Section 404 permit. The Corps should always be contacted to determine permit requirements.

The Corps evaluates Section 404 permit applications based on: 1) compliance with the guidelines developed by EPA, the Section 404(b)(1)

guidelines, to assess the impact of a project on environmental quality, and 2) factors to determine whether the project is in the public interest. If a project does not meet *both* of these requirements (compliance with the guidelines and a determination that the project is in the public interest), a permit must be denied.

The Corps must consider the requirements in the Section 404(b)(1) guidelines that discourage placement of dredged or fill material into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact on restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States.

To assure that the goals of the Clean Water Act are being met, the guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impacts on the aquatic ecosystem. For example, if the project can be constructed somewhere else without impacting wetlands and the same purpose achieved, the permit must be denied. The analysis of alternatives considers cost, logistics, and technology.

The Section 404(b)(1) guidelines also state that no permit can be issued if the disposal of dredged or fill materials will: violate state water quality standards; violate applicable toxic effluent standards; jeopardize federally listed endangered or threatened species; or cause or contribute to

a. which are or could be used by interstate or foreign travelers for recreational or other purpose; or

b. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. which are used or could be used for industrial purpose by industries in interstate commerce;

4. all impoundments of waters otherwise defined as waters of the United States under the definition;

5. tributaries of waters identified in paragraphs 1-4 of this section;

6. the territorial seas;

7. wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1-6 of this section.

[33 CFR 328.3(a)(1-7)]

significant degradation of the waters of the United States, which, as defined, include wetlands.

Effects contributing to significant degradation include a "significantly adverse effect" on: municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites, which includes wetlands; aquatic ecosystem diversity, productivity, and stability, including the loss of fish and wildlife habitat and loss of a wetland's capacity to assimilate nutrients, purify water, or reduce wave energy; and recreational, aesthetic, and economic values [40 CFR 230.10(c)].

If no practicable alternatives exist, impacts to wetlands must be minimized to the greatest extent possible. This can include the restoration or creation of wetlands to offset unavoidable wetland impacts. The EPA, Corps, and U.S. Fish and Wildlife Service (FWS) have all developed strong mitigation guidelines. The Corps usually incorporates such guidelines into permit requirements.

In addition, no permits are to be granted that involve alteration to wetlands unless "the benefits of the proposed alteration outweigh the damage to the wetlands resource "[33 CFR Part 320.4(b)(4)].

GENERAL PERMITS

The Corps has authority to issue general permits which provide blanket authorization on a nationwide, state, or regional level for actions that have minimal adverse impacts on the environment. Such actions do not require individual permits as

long as the project complies with the conditions in the general permit. Typical projects include navigation markers, utility line backfill and bedding, bank stabilization projects, minor road crossings and bridges, minor dredge and fill projects, some types of mooring structures, and certain federally approved and funded projects.

One general permit that is often applicable is Nationwide Permit #26. It specifically addresses activities in wetlands that are above the headwaters of a river or stream (less than 5 cfs average annual flow), or are isolated wetlands. Under this general permit, blanket authority is provided for activities impacting up to one acre of wetland, provided that certain permit conditions are met. For activities impacting between one and ten acres of wetlands, the Corps must be notified prior to the activity being undertaken. The Corps will consider the proposed action and coordinate with the EPA, FWS, National Marine Fisheries Service (NMFS), and the appropriate state resource agencies. The process takes about 30 days and results in either authorization to proceed under the nationwide permit or notification that an individual permit is required.

The Corps has recently reauthorized the "Nationwide Permit Regulations for the State of New York", effective January 21, 1992. For details on the types of general permits available and the conditions that apply to each general permit in New York, the applicant should obtain a copy of the Corps Public Notice of April 17, 1992.

In conjunction with the Nationwide Permit Regulations, the Corps has published a list of activity-specific (permit-specific) conditions associated with New York State Water Quality Certification (WQC) and Coastal Zone Management Consistency Concurrence (CZM). In addition to the referenced list, certain conditions are defined that apply to some or all of the nationwide permit activities. Prospective permittees planning to conduct activities under one or more nationwide permits must comply with the applicable DEC and New York State Department of State (DOS) conditions, as well as with all of the terms and conditions of the nationwide permit program. If the Corps list indicates that a specific nationwide permit is considered denied by either the DEC or DOS, an individual project-specific WQC and/or CZM concurrence is required prior to undertaking the activity.

DEC determination that a wetland is not regulated by the State does not free a property owner from his or her obligation under the Clean Water Act. The Corps regulates all discharges of dredged or fill material into wetlands and other waters, regardless of size.

Actions allowed under a nationwide permit are not subject to an appeal process. However, the Corps' District Engineer can override provisions of a general permit on a case-by-case basis if there is sufficient reason for concern about the effect of the project on the aquatic environment.

EXEMPTIONS (33 CFR 323.4)

Exempted activities or areas include: normal on-going farming, forestry, and ranching activities including cultivation, soil and water conservation practices; farm ponds; irrigation ditches; roads used strictly for farming or forestry operations; regular maintenance; and emergency reconstruction. Such activities are not exempt, however, if they convert wetlands to another use, or where the flow or circulation would be impaired or the reach of waters reduced.

Although many agricultural activities are exempt as noted above, if agricultural lands have been abandoned and wetlands have developed which would require hydrologic modification to return the land to agricultural uses, then authorization under a Department of the Army permit would be required.

REGULATING AGENCIES

Section 404 of the CWA regulates discharges to waters of the United States, including the filling of wetlands, and establishes a permit program to ensure that such discharges comply with environmental requirements. The Corps administers the federal permit program and is responsible for determining which areas are regulated as wetlands under the program. EPA has final authority over such decisions regarding the extent of geographic jurisdiction and is responsible for determining which activities are exempt, under Section

404(f), from regulation. EPA has responsibility for and has developed the environmental guidelines by which permit applications must be evaluated. The Corps reviews permit applications and issues, or denies issuance, of a Department of the Army permit for the discharge of dredged or fill material into wetlands. The Corps may override EPA guidelines in the interest of navigation (although this rarely occurs).

EPA reviews and comments on permit applications, with the authority to elevate a Corps permit decision to a higher level of Corps review. In addition, EPA has authority under Section 404(c) of the CWA to prohibit or restrict the placement of fill in wetlands that would have an unacceptable impact on water supply, fish, shellfish, wildlife, and recreational uses. EPA may veto the issuance of a Department of the Army permit, or require permit modifications or restrictions, through a 404(c) action.

Both the Corps and EPA have authority to bring enforcement action against unpermitted discharges into wetlands. Also, the Corps has enforcement authority over violation of the terms and conditions of a Department of the Army permit.

The FWS and NMFS also have responsibilities in the 404 program. These agencies review and comment on permit applications and have authority to elevate a Corps permit decision to a higher level of Corps review. They provide technical assistance to protect fish and wildlife resources and mitigate project impacts. Their authority is

derived from the Fish and Wildlife Coordination Act.

The DEC has authority to place conditions on or request denial of a Department of the Army permit if a proposed project does not comply with state water quality laws. Under Section 401 provisions of the Clean Water Act, the state certifies whether a proposed project complies with state water quality laws. The Corps generally cannot issue a Department of the Army permit if the state has denied water quality certification.

PERMIT PROCESS

An overview of the permit process is shown in the figure on pages 20 and 21. Elements of the process are described in the following paragraphs. Because of the flexibility in the implementation of the Clean Water Act, this overview is intended only as a description of a typical sequence of events.

Prior to formal application, the following may occur:

Informal meetings with the Corps may be requested at any time to discuss project concepts, potential permit requirements, and probable time required to complete the permit process.

An optional **Pre-Application Meeting** may be requested prior to submittal of a permit application. A pre-application meeting provides an opportunity for the applicant to present the proposed

project to federal, state, local, and tribal groups to obtain preliminary technical input. The remaining paragraphs describe steps in the formal application and review process.

Submittal of the Application to the Corps.

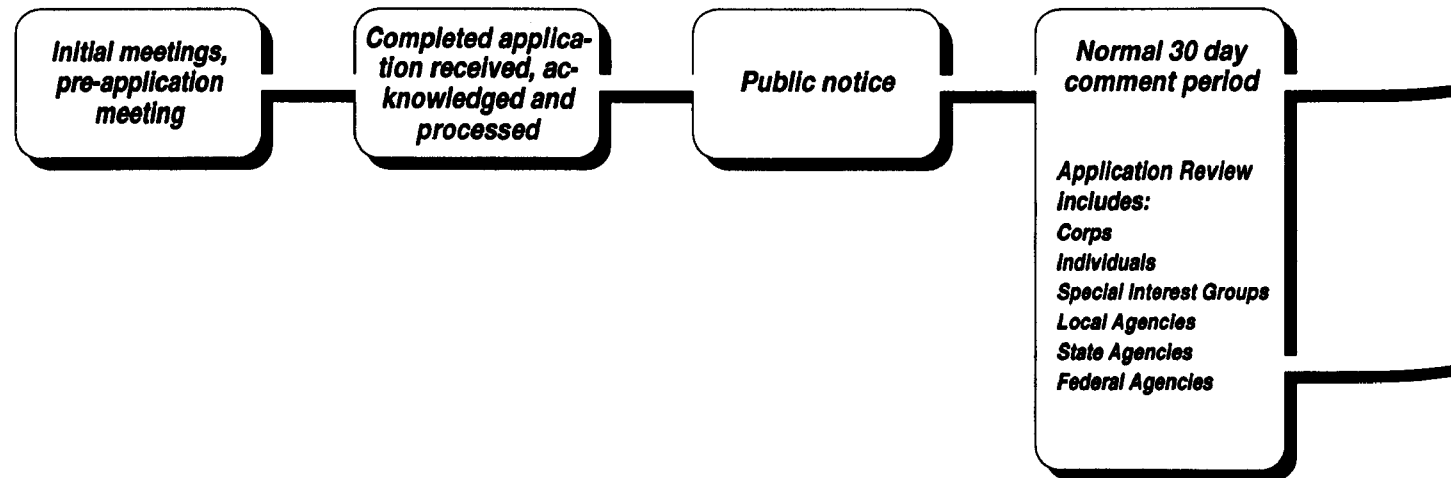
Outside the Adirondack Park, a joint DEC/Corps application procedure is in place. Application to DEC is sufficient; a copy of the application will automatically be forwarded by DEC to the Corps. For wetlands which the Corps, but not the DEC, has jurisdiction, application to the regional Corps office is required. For application inside the Adirondack Park, separate applications to the APA and the Corps are required. When received by the Corps, the application is checked for accuracy, completeness, and compliance with Corps format requirements.

Public Notice. Once a complete submittal is received, and upon determination of the need for

an individual permit, the Corps issues a public notice describing the proposed project. The public notice follows a set format which includes a project description; characteristics of the discharge and the extent of wetland proposed to be impacted; criteria for permit review; and potential impacts on threatened and endangered species, cultural resources, and wild and scenic rivers.

The notice is sent to an extensive list of groups and individuals, including public agencies, newspapers, adjacent property owners, treaty Indian tribes, and environmental groups. Any individual may request to be on the mailing list for specific regions or projects. In response to the public notice, the public has the opportunity to comment on the proposed activity. The Corps solicits public and agency comments for 30 days. Public agencies involved in the review process include:

- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service



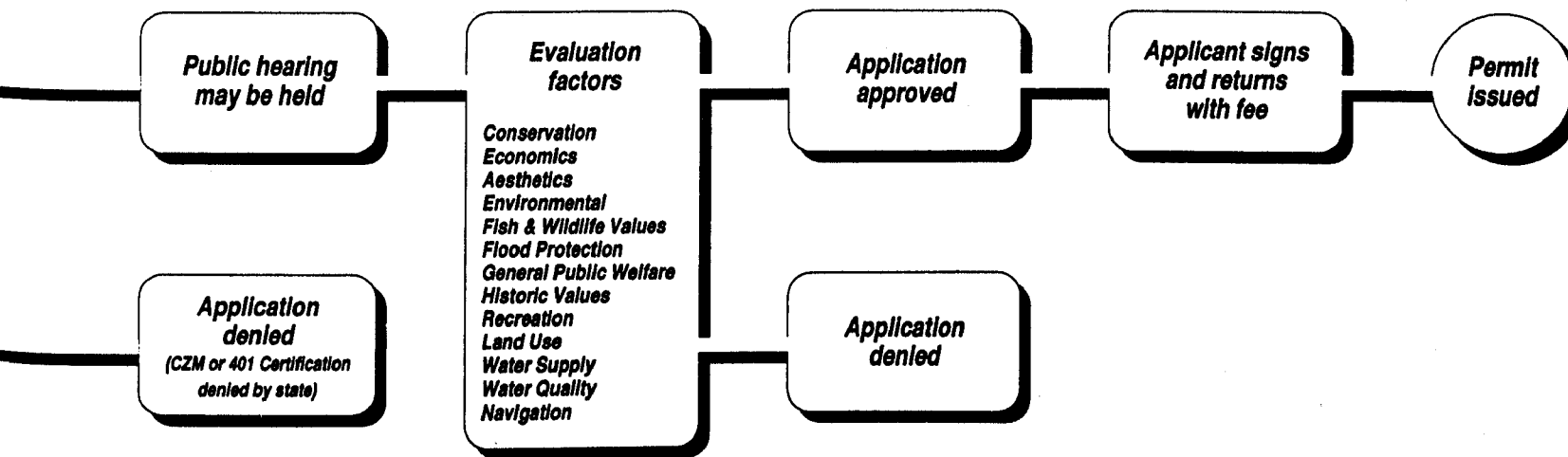
- National Marine Fisheries Service
- Treaty Indian Tribes
- New York State Department of Environmental Conservation
- Adirondack Park Agency, for wetlands within the Adirondack Park
- New York State Department of State
- Local jurisdictions

See the "Regulating Agencies" section on page 18 for their role in the review process.

If the state agencies deny either a 401 certification or a determination of coastal zone consistency, the Corps must deny the permit application without prejudice, that is, until such time as the applicant gains 401 certification and coastal zone consistency. In addition, if any local permits are denied, the Corps may also deny the 404 permit request without prejudice, until such time as the applicant acquires such permits.

Public Hearing. The Corps is not required to hold a public hearing, but may do so if requested and if it appears that important new information will come out of the hearing process.

Environmental Review. Because every permit issued by the Corps is a major federal action, the provisions of the National Environmental Policy Act (NEPA) apply to every permit. Thus, the Corps prepares an environmental assessment (EA) and, with Department of the Army Section 404 permit applications, a Section 404(b)(1) analysis. If the result of this step is a Finding of No Significant Impact (FONSI), the environmental documentation under NEPA is concluded. If there is reason to believe that the project will cause significant effect to the human environment, preparation of a federal environmental impact statement is required.



Permit Evaluation and Decision Making.

The Corps' permit review addresses compliance with the Section 404(b)(1) guidelines, public interest factors, and NEPA compliance. The Corps makes a determination to issue or deny a Department of the Army permit and prepares a decision document recording the decision making process. All applicable federal laws are considered during this point in the process. If necessary, the applicant is required to provide additional information. The final decision for permit approval or modification rests with the Corps.

PERMIT TIMING

The review process normally is concluded within 60 days of receipt of a completed application. However, the complexity of the wetland issues and laws and the number of agencies involved may greatly lengthen the process. In particular, if a controversial action is proposed or an EIS is required, the application process may take one to two years before the actual decision to approve, modify, or deny any permit application is made.

If the EPA, FWS, or NMFS exercise their option to elevate a permit decision to a higher level, under Section 404(q), the decision may be delayed 30 to 60 days. If EPA decides to exercise its authority under Section 404(c) to deny or restrict use of a site for placement of dredged or fill material, the Corps cannot issue a permit. The 404(c) process involves public participation, may involve hearings, and takes months to complete.

**CLEAN WATER ACT
SECTION 401****PURPOSE**

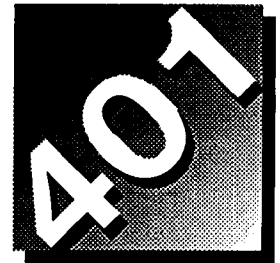
The purpose of Section 401 provisions is to ensure that federally permitted activities comply with the federal Clean Water Act, state water quality laws, and any other appropriate state laws (e.g., Protection of Waters program).

IMPLEMENTATION

Section 401 is implemented through a certification process. With respect to wetlands, the state certification process is most typically triggered through the submittal of the DEC and Corps Joint Application for Permit.

PROVISIONS OF THE LAW

Any applicant for a federal permit for any activity that could result in a discharge of a pollutant to a state's waters is required to obtain a certification from the state in which the activity is to occur. In essence, the state is to certify that the materials to be discharged into a wetland will comply with the applicable effluent limitations, water quality standards, and any other applicable conditions of state law. A certification obtained for construction of any facility must also pertain to the subsequent operation of the facility. If the state denies certification, the federal permitting agency must deny the permit application. If the state imposes



conditions on a certification, the conditions become part of the federal permit.

ACTIVITIES COVERED

Section 401 requirements pertain to any activity that requires a federal permit and that may result in a discharge to a state's waters. While most of the 401 certifications are initiated through submittal of the DEC and Corps Joint Application for Permit, occasionally other federal permit processes may also require 401 certification. An example would be the Federal Energy Regulatory Commission requirements for hydropower plants.

REGULATING AGENCIES

In the state of New York, the Department of Environmental Conservation implements the Section 401 requirements. DEC also tracks the responses of other reviewing agencies and has the final word on approval, denial, or special conditions for certification.

CERTIFICATION PROCESS

As mentioned, typically the 401 certification process begins with the receipt of the DEC and Corps Joint Application for Permit. Typically, sufficient information to process a 401 certification is provided through the federal permit process. If additional information is required, the applicant is notified of such by DEC. The application form is submitted in triplicate to the DEC or Corps for review. The form includes the applicant's name,

location and description of the proposed work, and other pertinent information. DEC responds to the list of proposed activities by determining whether specific conditions are required, or whether water quality certification should be denied for certain activities. Additionally, DEC has a set of general conditions that apply to all activities.

CERTIFICATION TIMING

DEC has 60 days, from the issuance of a Corps public notice, to respond to the Corps concerning certification for a proposed activity. DEC's response may be certification, denial, or a request for delay due to lack of information. If DEC has not responded within 60 days, the federal agency is authorized to waive certification requirements. The Corps' District Engineer can extend the time period for state response, not to exceed one year, when so requested by the state. The public generally has 30 days from the issuance of the Corps' public notice to comment to DEC on the request for water quality certification. However, depending on the scope and magnitude of proposed projects, the time allowed for public responses may be shortened or lengthened.

**OTHER RELATED FEDERAL LAWS
AND POLICIES**

**RIVERS AND HARBORS ACT
SECTION 10**

This law was enacted in 1899 to preserve the navigability of the Nation's waterways. Section 10 prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The provisions apply to any activity that alters the course, location, or capacity of a navigable water, i.e., any activity in, over, or affecting navigable waters. Actions in wetlands within these limits are subject to Section 10 provisions.

Navigable waters include all presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean high water in tidal waters and up to ordinary high water in freshwater areas. Provisions of Section 10 are implemented through a permit process that includes consideration of navigational, flood control, fish and wildlife management, and environmental impacts. NEPA compliance is required. Section 10 reviews often occur simultaneously with Section 404 permit reviews. The Section 404(b)(1) guidelines are not applicable in the Section 10 review process, but are applied when a proposed project requires authorization under Section 404, i.e., involves the discharge of dredged or fill material into a wetland.

**COASTAL ZONE MANAGEMENT
ACT OF 1972 (CZMA)**

The CZMA encourages each coastal state to develop a coastal zone management (CZM) plan which provides for a number of mandates as contained in Section 303(3) of the Act. New York has an approved coastal zone management plan. Thirty counties bordering on the marine coast and on major rivers and lakes are affected by the plan.

Section 307(c) of the CZMA requires any non-federal applicant, seeking a federal permit to conduct an activity affecting land or water uses in the state's coastal zone, to furnish a certification that the proposed activity will comply with the state's coastal zone management program. No federal permit will be issued until the state has concurred with the applicant's certification of consistency. The New York State Department of State reviews project proposals for their consistency with the state approved CZM plan. The DOS has six months from receipt of a consistency certification to issue a determination. If the DOS does not respond within this time frame, a determination of consistency may be presumed.

EXECUTIVE ORDER 11990

In 1977, President Carter officially recognized the value of the country's wetlands. His Executive Order 11990 included the following statement on wetland values:

"The Nation's coastal and inland wetlands are vital natural resources of critical importance to the people of this country. Wetlands are areas of great natural productivity, hydrological utility, and environmental diversity, providing natural flood control, improved water quality, recharge of aquifers, flow stabilization of streams and rivers, and habitat for fish and wildlife resources."

Through the order, the President directed federal agencies to avoid the unnecessary alteration and destruction of wetlands. Federal agencies must provide leadership and take action to minimize the destruction, loss, or degradation of wetlands affected by a federal project or by any project that receives federal funding. While the order does not regulate wetlands *per se*, it does establish wetland protection as the official policy of all federal agencies.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA)

The National Environmental Policy Act (42 U.S.C. 4321 et seq.) established a process requiring federal agencies to consider the environmental impacts of major federal actions that they undertake, including individual permit actions. The NEPA process emphasizes the full disclosure of

environmental impacts and their consideration, along with technical and social/economic considerations, prior to an agency decision.

Guidance for the implementation of NEPA is provided by the Council on Environmental Quality (CEQ). The CEQ Regulations (40 CFR 1500-1508) emphasize the consideration of alternatives, including ways to mitigate (avoid or reduce) harmful environmental impacts. Generally, the NEPA process occurs concurrently with the Section 404 reviews by the Corps of Engineers. Most federal agencies, including the Corps and EPA, have adopted their own regulations for implementing NEPA requirements.

NEPA requires that an environmental impact statement be prepared for any major federal action that would have significant environmental impacts. The EIS must thoroughly evaluate any environmental impacts of the proposed action and its alternatives. Permits issued by a federal agency, such as a Department of the Army permit pertaining to Section 404, are considered to be federal actions that may require an EIS.

To determine if a proposal would have significant environmental impacts, the agency may prepare an environmental assessment (EA). A permit applicant often provides much of the information and analysis used to prepare the EA. The EA contains sufficient evidence and analysis to determine if an EIS is required. If an EIS is not re-

Mitigation under NEPA includes:

avoiding the impact altogether by not taking a certain action or parts of an action;

minimizing impacts by limiting the degree or magnitude of the action and its implementation;

rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

compensating for the impact by replacing or providing substitute resources or environments.



quired, a finding of no significant impact (FONSI) document, explaining why an EIS is not required, is prepared by the federal agency. In New York, documents prepared under the State Environmental Quality Review Act may provide information and analysis useful in preparing the EA or FONSI.

The New York SEQRA parallels the requirements of NEPA. In virtually the same manner as federal agencies, state agencies are required to consider environmental impacts associated with proposed actions. The SEQRA process is summarized under this guidebook's section on state regulations.

1990 FOOD, AGRICULTURE, CONSERVATION, and TRADE ACT (1990 Farm Bill)

Swampbuster Provision

The 1990 Farm Bill contains a provision regarding wetland conversion to agricultural land. This provision, known as Swampbuster, denies eligibility for all United States Department of Agriculture (USDA) farm programs to farmers who convert wetlands to croplands. This provision applies to all commodity crops produced by those farmers, not just to those produced on converted wetlands.

Programs covered by the Swampbuster regulations include USDA price and income supports, disaster payments, crop insurance, Farmers

Home Administration loans, Commodity Credit Corporation storage payments, farm storage facility loans, and Conservation Reserve Program payments.

Farmers who apply for certain USDA programs must certify that they will not produce agricultural commodities on land that was converted from wetland after December 23, 1985. The Soil Conservation Service (SCS) evaluates each farm.

The SCS performs wetland determinations in the Swampbuster program. Those determinations may differ from jurisdictional wetland delineation under the Section 404 program, due to differences in the delineation criteria of the two programs. The EPA, Corps, and SCS are developing procedures to allow farmers to rely on written SCS wetlands jurisdictional determinations as the final federal government position on the extent of Clean Water Act jurisdiction.

Wetlands Reserve Program

The Wetlands Reserve Program (WRP) is a voluntary program administered by the USDA Agricultural Stabilization and Conservation Service (ASCS) offering landowners a chance to retire marginal crop land and receive payments for restoring and protecting wetlands on their farms. Lands eligible for WRP include farmed wetlands that are restorable, and wetlands converted to cropland prior to December 23, 1985. These lands must have been in agricultural production for at least one of the 1986-1990 crop years. The land

owner and ASCS enter a legal agreement, a conservation agreement, in which the landowner voluntarily sets a limitation on the future use of the land, permanently or for 30 years. Eligible landowners apply for enrollment declaring their intent to participate and then obtain an approved wetland reserve plan of operation (WRPO). The SCS and FWS jointly help landowners develop plans. A seventy-five percent cost share is paid on permanent easements for restoring wetlands.

FISH AND WILDLIFE COORDINATION ACT OF 1958

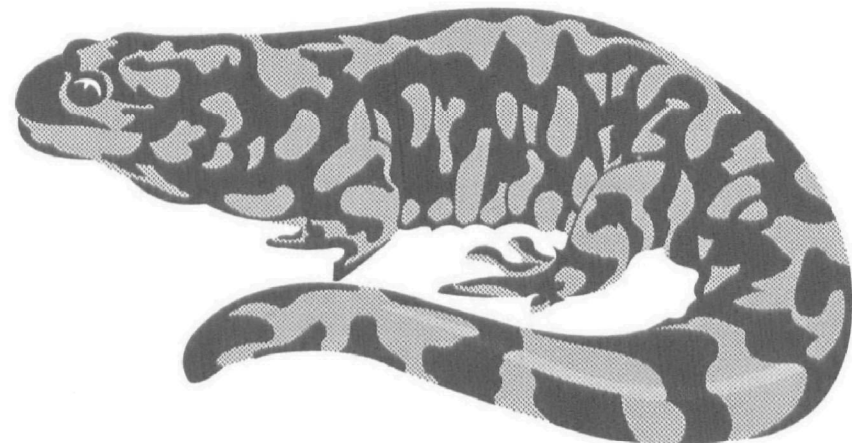
The Fish and Wildlife Coordination Act (FWCA) and Reorganization Plan No. 4 of 1970, requires federal agencies to give wildlife conservation equal consideration with other features during planning and decision-making processes that may impact water bodies, including wetlands. Under the FWCA, if the proposed project will impact water and wetland resources, the federal agency must consult with appropriate state and federal wildlife agencies to determine necessary mitigation measures.

ENDANGERED SPECIES ACT OF 1973

The Endangered Species Act (ESA) requires federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to ensure that their actions do not

jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modifications of the critical habitat of such species. In 1986, the Department of the Interior, through the U.S. Fish and Wildlife Service, and the Department of Commerce, through the National Marine Fisheries Service, established procedures for the Act's consultation requirements of Section 7 (50 CFR Part 402, 1986 Rule).

Section 7(a)(2) of the ESA requires federal agencies to ensure that any action authorized, as in the issuance of Department of the Army permits, funded, or carried out by such agency does not jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of habitat of such a species which has been designated as critical ("critical habitat").



The 1978 Amendments added section 7(c), requiring the preparation of biological assessments in appropriate instances, and Section 7(d), prohibiting a federal agency or any involved permit or license applicant, after initiation of consultation, from making an irreversible or irretrievable commitment of resources which would foreclose the adoption of any reasonable and prudent alternatives.

WILD AND SCENIC RIVERS ACT

For the purposes of the Wild and Scenic Rivers Act (WSRA), water resource actions are defined as any project or action that could affect the free-flowing characteristics of the river, e.g., dredge/fill operations, placement of riprap, etc. Under Section 7(a) of the WSRA, federal actions on water resources actions are prohibited if they result in a direct adverse effect on the characteristics which result in a river's WSRA classification. The Department of the Interior has determined that actions within one-quarter mile or within the visual field of a river could have a direct impact. Evaluation of the effect on a river segment should be coordinated with the appropriate federal land managing agency. The National Park Service is the agency responsible for most river segments in New York.

NATIONAL HISTORIC PRESERVATION ACT OF 1966

The National Historic Preservation Act (NHPA) protects properties listed in, or eligible for listing in, the National Register of Historic Places (NRHP), through review of and comment on federal undertakings that affect such properties by the Advisory Council on Historic Preservation (ACHP). The associated review is a public interest process through which the federal agency proposing an undertaking, such as Department of the Army permit issuance, participates along with the State Historic Preservation Officer, ACHP, and interested organizations and individuals. This review ensures that impacts to listed NRHP properties, or those considered for listing, are identified, and that alternatives to avoid or mitigate an adverse impact are adequately considered in the planning process.

STATE REGULATIONS

In this section, state laws that affect the use of wetlands are described in more detail. These laws and programs include the New York State Freshwater Wetlands Act, Adirondack Park Agency Act, New York State Tidal Wetlands Act, Waterfront Revitalization of Coastal Areas and Inland Waterways Act, State Environmental Quality Review Act, Use and Protection of Waters Program, and the Coastal Erosion Hazard Areas Act. Permit application, process, and timing information are presented in the discussion of the Uniform Procedures Act.

FRESHWATER WETLANDS ACT

Legal Authority

Freshwater Wetlands Act, New York Environmental Conservation Law, Article 24.

Implementing Regulations: Title 6, Parts 662, 663, 664, 665 and Subtitle Q of Title 9, Parts 570 and 578 of the New York Code of Official Rules and Regulations (6NYCRR 662-665 and 9NYCRR 570 and 578).

Program Description

The DEC is the principal permitting authority, although in a few instances this authority has been delegated to local governments. The Adirondack Park Agency is the permitting authority for wetlands within the Adirondack Park, under

authority of the Freshwater Wetlands Protection Act and the Adirondack Park Agency Act. In order to receive a permit, an applicant must demonstrate that the proposed activity will be in accord with the policies and provisions of the Freshwater Wetlands Act, that is, "to prevent the despoliation and destruction of freshwater wetlands, and to regulate use and development...to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the state." The permitting authority must ensure that the activities allowed in permits are consistent with the policies of the Freshwater Wetlands Act and the Adirondack Park Agency Act, and where necessary impose conditions that ensure compliance.

Wetlands Jurisdiction

Pursuant to the Freshwater Wetlands Act, the DEC has prepared maps of all freshwater wetlands that are 12.4 acres or larger in size or, if deemed to be of unusual local importance, wetlands smaller than 12.4 acres. Wetlands one acre or larger, or any size wetland adjacent to open water, are regulated within the Adirondack Park. The Freshwater Wetlands Act defines freshwater wetlands as:

Lands and waters of the state shown on the freshwater wetlands map which contain any or all of the following: (a) lands and sub-

merged lands commonly called marshes, swamps, sloughs, bogs, and flats supporting aquatic or semi-aquatic vegetation which depend upon seasonal or permanent flooding or sufficiently water logged soils to give them a competitive advantage (the Act as written includes a list of commonly occurring wetland plants);

(b) lands and submerged lands containing the remnants of any vegetation that is not aquatic or semi-aquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided further that such condition can be expected to persist indefinitely, barring human intervention;

(c) lands and water substantially enclosed by aquatic or semi-aquatic vegetation as set forth in paragraph (a) or by dead vegetation as set forth in paragraph (b), the regulation of which is necessary to protect and preserve the aquatic and semi-aquatic vegetation; and

(d) the waters overlying the areas set forth in (a) and (b) and the lands underlying (c) [N.Y. Environmental Conservation Law Section 24-0107(1)].

The boundaries of these freshwater wetlands are the outer limits of the vegetation in (a) and (b) above and the waters in (c). In addition, areas within 100 feet of wetlands, or further when necessary to protect the wetland, are subject to regulation. The New York State Freshwater Wetlands Maps show the approximate locations of the actual wetland boundaries, at a scale of 1:24,000. Maps may be viewed at local government clerks offices, the regional DEC offices, APA head-quarters, and they are available for purchase through contact with regional DEC offices.

Regulated Activities

Activities subject to regulation are addressed in detail in Title 6 of the New York Code of Official Rules and Regulations, Part 663. They include:

any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel, or other aggregate from any freshwater wetland, either directly or indirectly;

any form of dumping, filling, or depositing of any stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly;

erecting any structures, roads, the driving of pilings, or placement of any other obstruction whether or not changing the ebb and flow of the water;

any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and

any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom [N.Y. Environmental Conservation Law Section 24-0701(2)].

The following types of activities have been exempted from regulation by the Freshwater Wetlands Act, or are not regulated because they will not substantially impair any of the functions and benefits of freshwater wetlands (see the Freshwater Wetlands Act and 6NYCRR663 for a full description of exempted activities):

- continuing lawfully existing uses and activities;
- routine maintenance of existing functional structures, e.g., repairing and repainting;
- normal agricultural practices, except filling, clear-cutting of trees, or construction of non-agricultural structures;
- recreational activities and harvesting of natural products;
- selective tree cutting and harvesting fuel

wood (not clear-cutting).

DEC has issued a booklet entitled *Freshwater Wetlands Program: Applicant's Guide*, available through contact with the regional DEC offices (see "Implementing Agencies" in the back of this booklet). This guide addresses regulated and exempted activities (pp. 2 and 3). It is advisable to contact the DEC or the APA before assuming whether or not an activity is exempt from regulation by the Freshwater Wetlands Act.

ADIRONDACK PARK AGENCY ACT

Legal Authority

New York Executive Law, Article 27

Program Description

The Adirondack Park Agency Act protects wetlands by regulating activities in or near them that pose the threat of adverse impact, including activities such as the subdivision of land.

Wetlands Jurisdiction and Regulated Activities

The APA regulates wetlands one acre or larger or wetlands of any size that are adjacent to open water. Copies of maps noting regulated wetlands within the Park may be viewed at the Adirondack Park Agency headquarters. Regulated

activities include those as listed under the New York State Freshwater Wetlands Act, and also include the subdivision of land affecting wetlands.

TIDAL WETLANDS ACT

Legal Authority

Tidal Wetlands Act, New York Environmental Conservation Law, Article 25.

Implementing Regulations: Title 6, New York Code of Official Rules and Regulations, Part 661 (6NYCRR 661).

Program Description

The DEC regulates tidal wetlands through permits granted or denied in accordance with DEC regulation, which is based on the factors listed in N.Y. Environmental Conservation Law Section 25-0302(1). The public policy of the Act is "to preserve and protect tidal wetlands, and to prevent their despoliation and destruction, giving due consideration to reasonable economic and social development..." [N.Y. Environmental Conservation Law Section 25-0102]. The factors listed in Section 25-0302(1) include the present and potential value of wetlands for marine food production, wildlife habitat, storm and flood control, recreation, education, and research. In order to receive a permit, an applicant must demonstrate that the proposed activity will be in complete accord with the policy and provisions of the Tidal Wetlands Act.

Local governments may regulate tidal wetlands concurrently with the DEC. The DEC's permit requirements must be complied with, in addition to such local requirements.

Wetlands Jurisdiction

The DEC has authority over inventoried tidal wetlands and areas immediately adjacent to these wetlands. The DEC has mapped tidal wetlands boundaries as well as wetlands types on aerial photography of the entire marine district. Maps may be viewed at local government clerks offices, the regional DEC offices, and they are available for purchase through contact with regional DEC offices. Tidal wetlands include the following areas:

- (a) those areas which border on or lie beneath tidal waters, such as, but not limited to, banks, bogs, salt marsh, swamps, meadows, flats or other low land subject to tidal action, including those areas now or formerly connected to tidal waters;
- (b) all banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: (followed by a list of common wetland vegetation associated with tidal and saline influenced habitats) [N.Y. Environmental Conservation Law Section 25-0103.1]].

In addition, DEC's regulations clarify that the Tidal Wetlands Act applies to all lands under tidal waters, including coastal shoals, bars, and flats and the littoral zone to a depth of six feet below mean low water. In general, adjacent areas are those areas closest to the most landward tidal wetland boundary which are (1) within 300 feet of the landward edge of a wetland (150 feet in the City of New York), or (2) up to ten feet in elevation, or (3) to the seaward edge of the closest lawfully existing, as of August 20, 1977, functional and substantial man-made structure [Title 6, Official Code of Rules and Regulations Part 661.4(b)(1)].

Regulated Activities

The Tidal Wetlands Act regulates the following activities:

any form of draining, excavation, and removal either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate from any tidal wetland;

any form of dumping, filling, or depositing of soil, stones, sand, gravel, mud, rubbish or fill of any kind;

the erection of any structure or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb or flow of the tide; and

any other activity ... which may substantially impair or alter the natural condition of the tidal wetland area [N.Y. Environmental Conservation Law Section 25-0401(2)].

This includes activities associated with the construction of dams and docks, but does not include the depositing or removal of natural products of the tidal wetlands by recreational or commercial fishing, shell fishing, aquaculture, hunting, or trapping. DEC has issued a booklet entitled *Tidal Wetlands Program: Applicant's Guide*, available through contact with the regional DEC offices (see "Implementing Agencies" in the back of this booklet). This guide addresses regulated and exempted activities (pp. 2 and 3).

WATERFRONT REVITALIZATION ACT

Legal Authority

Waterfront Revitalization of Coastal Areas and Inland Waterways Act, New York Executive Law, Article 42.

Implementing Regulations: Title 19, New York Code of Official Rules and Regulations, Part 600 (19NYCRR 600).

Program Description

In addition to the Tidal and Freshwater

Wetlands Acts, New York regulates its coastlines through the Waterfront Revitalization of Coastal Areas and Inland Waterways Act. Under this Act, the New York State Department of State administers the state's coastal program which contains legislatively enacted coastal areas policies to which state agencies must conform. The Act also encourages local governments to adopt waterfront revitalization programs which are consistent with the state's coastal area and inland waterways policies.

The state's policies, contained in New York Executive Law Section 912, include requiring a balance between economic development and preservation that prevents the loss of natural resources while encouraging the use of existing infrastructure and public services.

The Act also encourages municipalities located on inland waterways to adopt local waterfront revitalization programs. Once a program is approved by the Department of State, state agencies must act in a manner consistent to the maximum extent practicable with the local program [N.Y. Executive Law Section 915-a(8)].

Geographic Jurisdiction

The Waterfront Revitalization Act applies to all coastal areas which are defined as:

- (a) the State's coastal waters; and
- (b) the adjacent shore lands, including land-locked waters and subterranean waters, to the extent such coastal waters and adjacent

lands are strongly influenced by each other, including but not limited to, islands, wetlands, beaches, dunes, barrier islands, cliffs, bluffs, inter-tidal estuaries, and erosion prone areas.

Coastal waters are defined as: Lakes Erie, Ontario, and Champlain, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, the Harlem River, the Kill van Kull and Arthur Kill, Long Island Sound and the Atlantic Ocean, and their connecting bodies, bays, harbors, shallows and marshes [N.Y. Executive Law Section 911].

The coastal zone extends to the limit of the State's jurisdiction on the water side and inland only to encompass those shore lands, the uses of which have a direct and significant impact on coastal waters. The coastal area boundaries are on file in the Office of the Secretary of State. The boundaries are also on file with the clerk of each county and local government that has any portion of its jurisdiction within the boundaries of the coastal area.

The Act also applies to certain designated and non-designated inland waterways as those terms are defined in N.Y. Executive Law Section 911.

Regulated Activities

The Waterfront Revitalization Act does not regulate specific activities, but rather requires that all state action conform to the policies of the Act.

These actions include grants, loans, or other funding assistance, land use, development, or planning, and land transactions [N.Y. Executive Law Section 919].

understand how a project would affect the environment. It is intended to help decision-makers at all levels of state government make better environmental decisions.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

Legal Authority

State Environmental Quality Review Act, New York Environmental Conservation Law, Article 8.

Implementing Regulations: Title 6, New York Code of Official Rules and Regulations, Part 617 (6NYCRR 617).

Program Description

The New York State Environmental Quality Review Act was passed by the legislature with the intent that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations. The basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review, and decision making processes of state, regional, and local government agencies at the earliest possible time [N.Y. Environmental Conservation Law Section 617.1]. Information provided during the SEQRA process helps agency decision-makers and the general public

Implementation

SEQRA is not a permit program. It is a process that meshes with existing permit and approval and/or licensing programs. SEQRA requires a full disclosure of the likely significant environmental impacts of a project and the identification of ways to mitigate or reduce the impacts of a project. Impacts to the natural and man-made environment are considered. For proposals likely to have a significant impact to the environment, an environmental impact statement must be prepared.

Although SEQRA has no regulatory or policy provisions directed specifically at wetlands, agencies and the public become aware of likely impacts to wetlands and environmental resources through the process of identifying environmental impacts. Agencies or local government offices may deny permits or other approvals under SEQRA if the proposal is likely to result in significant adverse environmental impacts and if mitigative measures would be insufficient to mitigate the identified impacts. SEQRA rules emphasize the identification of mitigative measures that may be required in permit conditions to avoid or reduce environmental impacts to wetlands or other resources.

The consistency of a proposal with existing plans and policies, such as local zoning and local sensitive areas ordinances which may contain wetland policies, may be evaluated according to SEQRA. The provisions of the Uniform Procedures Act (see the subsequent section so titled) require that applications for DEC permits cannot be considered complete unless certain requirements of SEQRA have been met.

Provisions of the Law

SEQRA provides policies, goals, and procedures intended to ensure that the protection and enhancement of the environment, and human and community resources should be given appropriate weight with social and economic considerations, and that these factors be considered together in reaching decisions on proposed activities. Procedural provisions distinguish between actions that are likely to have significant environmental impacts and actions that do not.

The first step in the SEQRA process is to determine how to classify a proposed activity. Classes of action which require no further review under SEQRA include: (1) exempt - specific actions established by the legislature which require no review under SEQRA [Section 617.29(q)]; (2) excluded - actions initiated prior to the effective dates of SEQRA or actions that receive environmental review under the authority of the public service law or the Adirondack Park Agency [Section

617.2(p)]; and (3) type II - actions contained on a list in section 617.13 or on an agency's locally-adopted list. Type II actions are those which do not have a significant effect on the environment and do not require the preparation of a draft EIS.

Classes of actions which do require further review under SEQRA include: (1) type I - actions that meet or exceed a threshold contained on the list found at Section 617.12 or on an agency's locally adopted type I list; and (2) unlisted - actions that do not meet or exceed the thresholds contained on the type I list and are also not contained on the type II, exempt, or excluded action lists. Type I actions are more likely to have a significant effect on the environment than unlisted actions. Both type I and unlisted actions require the determination of significance and may require the preparation of an EIS.

Regulating Agencies

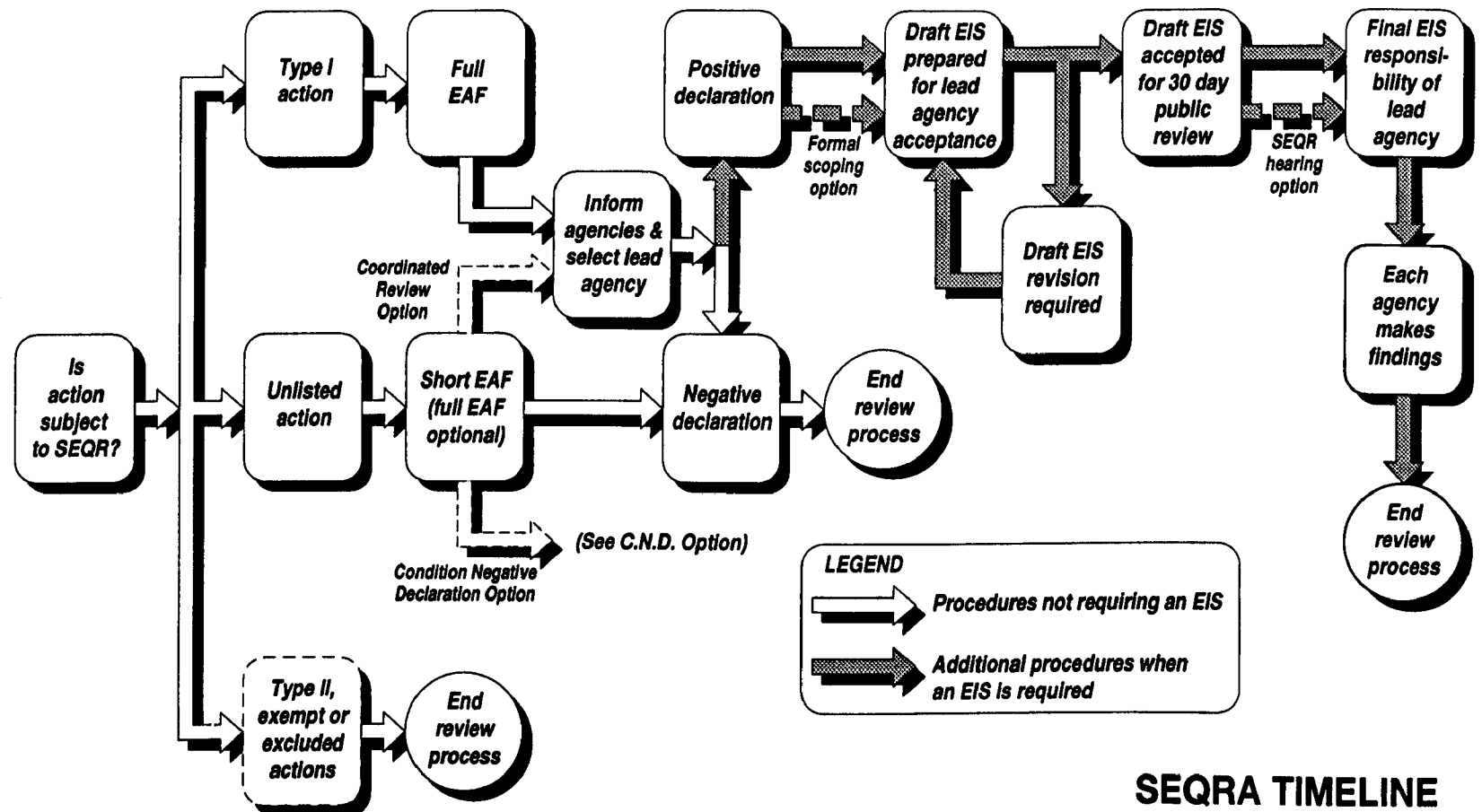
SEQRA applies to all New York State agencies, including local governments. When agencies approve, undertake, or fund activities, they must follow specific procedures to assure that they give appropriate consideration to environmental factors and carry out SEQRA's provisions.

SEQRA Process

If review under SEQRA is required, a lead agency is identified. The lead agency may be any public agency whose responsibility is to coordinate the SEQRA environmental review of a proposed project with all other state and/or local agencies having jurisdiction over facets of the project. The lead agency determines whether or not the proposed action will have a significant impact on the environment. The initial process calls for the completion of an Environmental Assessment Form (EAF). As a result of the responses to a series of questions, the lead agency issues a determination of significance (positive declaration) if an action will have a significant impact to the environment or a determination of non-significance (negative declaration) if an action will not have a significant impact on the environment. A negative declaration will end the SEQRA review. A positive declaration will require the preparation of a Draft Environmental Impact Statement (DEIS).

To prepare a DEIS, the lead agency holds a scoping session. Scoping is the process by which all issues to be discussed in the DEIS are identified. The goal is to identify the relevant environmental issues and provide preparers with the greatest specificity possible, de-emphasize or eliminate insignificant or non-relevant issues, identify the extent and quality of information needed, identify the range of alternatives to be discussed, and identify mitigation measures.

After the lead agency accepts the DEIS, it may hold a public hearing to solicit comments. The notice of the completion of a DEIS starts the comment period. This period must be a minimum of 30 days. After the public comment period has ended, the preparer of the DEIS has 45 days to complete the final EIS (FEIS). Review of the FEIS includes the solicitation of comments from all involved regulatory agencies. The acceptance of the FEIS and the adoption of findings then ends the SEQRA process.



OTHER RELATED STATE LAWS AND POLICIES

USE AND PROTECTION OF WATERS PROGRAM

Legal Authority

Use and Protection of Waters Program, New York Environmental Conservation Law, Article 15, Title 5.

Implementing Regulations: Title 6, New York Code of Official Rules and Regulations, Part 608 (6NYCRR 608).

Program Description

The policy of New York State as set forth in the Environmental Conservation Law, Title 5 of Article 15, is to preserve and protect the state's lakes, rivers, streams, and ponds. To implement this policy, the DEC created the Protection of Waters Program with the intent to prevent undesirable activities on the beds and banks of water bodies.

Geographic Jurisdiction

Jurisdictional authority includes navigable and protected waters of the state. Navigable waters are all lakes, rivers, streams and other water bodies which are navigable in fact or upon which vessels with a capacity of one or more persons can be operated, notwithstanding interruptions due to artificial or natural obstructions or seasonal variations in capacity. Protected waters of the state

involve waters within the classifications AA, A, B, as well as C(t). The C(t) class of protected waters has a best usage of trout fishing. The next highest classification, B, has best usages of contact recreation, such as swimming and fishing. The highest classifications, AA and A, include waters used for drinking and cooking as well as for contact recreation and fishing.

For projects in protected waters which involve disturbance of a bank, regulatory jurisdiction extends not more than 50 feet horizontally from the mean high water line, except that it may be extended up to the crest of a contiguous bluff, cliff, hillside or similar feature to protect the water body.

Regulated Activities

Activities which require a permit include: 1) any activity which will change, modify or disturb a protected water, its bed or banks; 2) removal of sand, gravel, or other material from the bed or banks of a protected water; 3) excavation or placement of fill, either directly or indirectly, in a navigable water or in adjacent marshes and wetlands; 4) construction or alteration of a dam or similar structure which permanently or temporarily impounds the water of a natural stream or watercourse having a drainage area greater than one square mile; 5) construction of a large farm pond in an upland area; 6) construction, reconstruction, or repair of a large dock, pier, wharf, platform, breakwater or other structures in, on, or above a navigable water, except

for state-owned lands underwater; 7) installation or modification of a mooring area for ten or more boats in a navigable water; and 8) seasonal replacement or installation of a floating dock or other structure (which did not exist prior to May 4, 1993) in a navigable water.

DEC has issued a booklet entitled *Protection of Waters Program: Applicant's Guide*, available through contact with the regional DEC offices (see "Implementing Agencies" in the back of this booklet). This guide addresses regulated and exempted activities (pp. 2 and 3).

NEW YORK COASTAL EROSION HAZARD AREAS ACT

Legal Authority

New York Coastal Erosion Hazard Areas Act,
New York Environmental Conservation Law,
Article 34.

Implementing Regulations: Title 6, New York
Code of Official Rules and Regulations, Part 505
(6NYCRR 505).

Program Description

The intent of this program is to regulate development in erosion-prone coastal areas. The program affects certain lands along the coastal rivers of lakes Erie, Ontario, and Champlain, the St. Lawrence and Niagara Rivers, the Hudson River south of the federal dam at Troy, the East River, Harlem River, the Kill van Kull and Arthur Kill, the

Long Island Sound, the Atlantic Ocean, and their respective connecting water bodies, bays, harbors, shallows, and wetlands. The DEC Bureau of Flood Protection administers the program.

Geographic Jurisdiction

There are two categories of regulated areas: 1) Natural Protective Features, and 2) Structural Hazard Areas. Natural Protective Features include the near shore, beaches, bluffs, primary dunes, and secondary dunes. Structural Hazard Areas are located landward of Natural Protective Features, and are found on shorelines that have a demonstrated long-term annual recession rate of one foot per year or greater. The Structural Hazard Area is determined by multiplying the recession rate by 40, and is measured from the landward limit of the Natural Protective Feature. If the recession rate is less than one foot per year, or cannot be accurately established, then there is no Structural Hazard Area.

The regulated area is depicted for each municipality on Coastal Erosion Hazard Area maps that use an air photo base map at a scale of 1" = 200'. The maps depict the landward limits of the Natural Hazard Areas and Structural Hazard Areas, and indicate the recession rate in feet per year, where applicable. Maps may be viewed at local government clerks offices, the regional DEC offices, and the DEC Bureau of Flood Protection office, and they are available for purchase from the Bureau of Flood Protection (see "Implementing Agencies" for address).

Regulated Activities

Regulated activities include construction, modification, restoration of structures; excavation; grading; mining; dredging and deposition of material; construction, modification, restoration of erosion protection structures; and miscellaneous activities such as motor vehicle use and disturbance of bird nesting and breeding areas.

Exempt activities include normal maintenance of structures, beach grooming and cleanup, vegetative plantings, open-work docks with 200 square feet or less of deck area, sand fencing, restoration of existing structures that are damaged or destroyed by events not related to coastal flooding and erosion, private walkways, and seasonal docks on floats.

UNIFORM PROCEDURES ACT**Legal Authority**

New York Environmental Conservation Law, Article 70.

Implementing Regulations: Title 6, New York Code of Official Rules and Regulations, Part 621 (6NYCRR 621).

Program Description

The Uniform Procedures Act was established to standardize the procedures for processing the DEC's major regulatory permits. It was the legislature's intent to assure fast and complete review, eliminate inconsistent procedures, establish time periods for DEC review, and encourage public participation in permit review and decision-making.

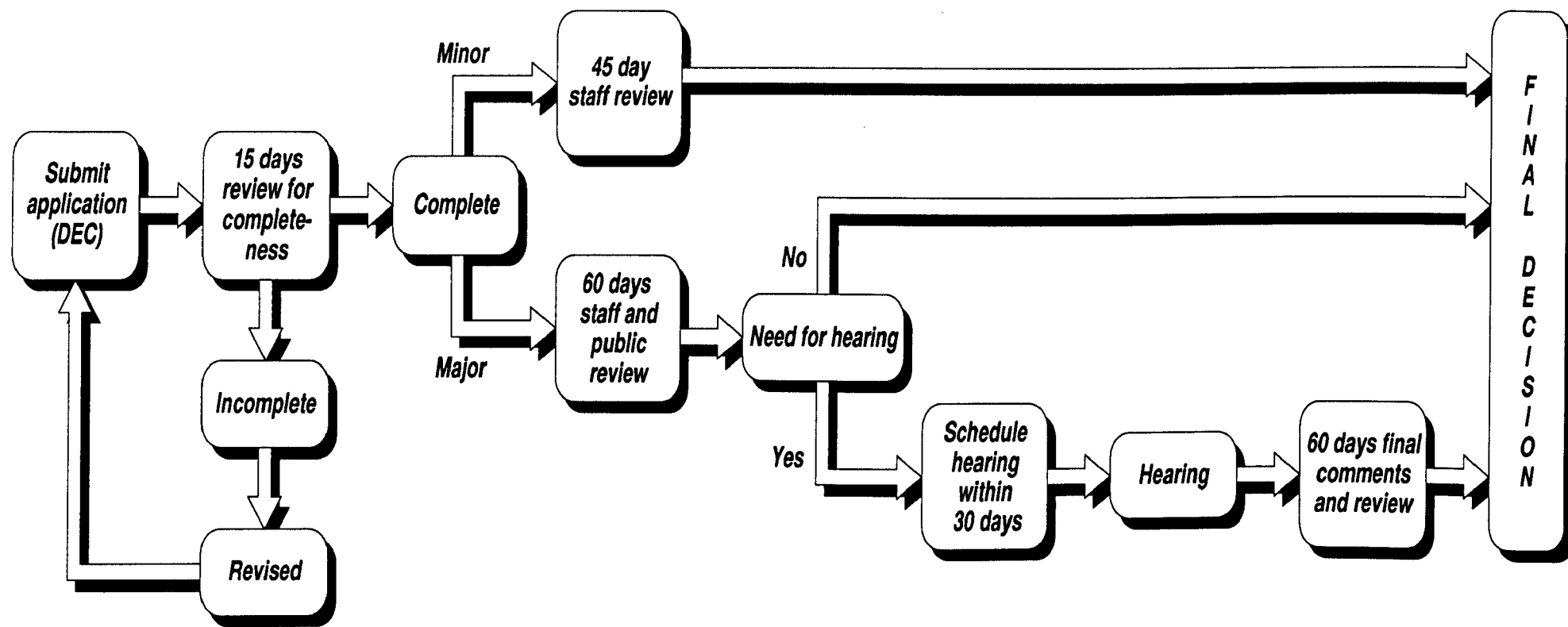
To accomplish these intentions, the law and its associated regulations provide standards and procedures for submitting applications, reviewing the applications, providing public notice, conducting public hearings and reaching final decisions.

Permits issued under the Protection of Waters Program; Freshwater Wetlands, Tidal Wetlands, and Coastal Erosion Hazard Area Acts; and 401 Certification are all subject to these standardized procedures.

Program Implementation

The process involved in obtaining a permit starts with the completion of the appropriate application materials, including submission of applicable fees. The DEC has 15 days to determine if the application is complete. If the application is found to be complete, the project is identified as a minor or major project. A minor project will result in the issuance of a decision within 45 days of the determination that the application is complete.

Notice of a major project is published in the Environmental Notice Bulletin (ENB) and in a local newspaper. After a project is "noticed", a minimum 15-day public comment period is initiated. At the close of the public comment period, the DEC evaluates the comments and determines whether a public hearing is necessary. If no hearing is held, the DEC must make its final decision within 90 days of the determination that the project application is complete. The DEC has 60 days to issue a final decision at the conclusion of the public hearing when held.



UNIFORM PROCEDURES TIMELINE

(Applies to Freshwater Wetlands, Tidal Wetlands, and Protection and Use of Waters Permits)

CFR: Code of Federal Regulations, the compilation of federal regulations adopted by federal agencies through a rule-making process.

CFS: cubic feet per second. This refers to the average annual flow of water bodies. Waters less than 5 cfs are considered to be above headwaters of a river or stream and fall within jurisdiction of Nationwide Permit 26, whereas waters greater than or equal to 5 cfs are considered below headwaters of a stream or river and would, therefore, be subject to an individual permit.

CUMULATIVE EFFECTS: the combined environmental impacts that accrue over time and space from a series of similar or related individual actions, projects, or contaminants. Although each action may seem to have a negligible impact by itself, the combined effect can be severe.

CLEAN WATER ACT (CWA): previously known as the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*). The goal of the Act is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. The term "waters of the United States" includes wetlands (40 CFR Part 230.3[s]). Section 404 of the CWA addresses wetlands, and its authorities are implemented through a permit program.

DISCRETIONARY AUTHORITY: a regulatory agency's authority to interpret geographic areas and types of activities as falling within the realm of their regulation.

DREDGING: any physical digging into the bottom of a water body, including wetlands. Dredging can be done with mechanical or hydraulic machines, and changes the shape and form of the bottom of the water body.

FILL MATERIAL: any material used to change the bottom elevation or replace waters (see definition below), including wetlands, with dry land. Fill material may consist of rock, sand, dirt, and industrial, municipal and agricultural wastes discharged into waters.

HYDRIC SOIL: soil that is saturated long enough to periodically produce anaerobic conditions, thereby influencing the chemical reactions in the soil and the differential success of biota. Federal Section 404 regulatory definition of wetlands includes the presence of hydric soils as one of three parameters (along with wetland vegetation and hydrology).

HYDROLOGY: this refers to surface and groundwater characteristics. Wetlands exhibit long term or periodic inundation by surface waters (over their entire extent, or restricted to streams, channels, ditches, or ponds), or long term or periodic soil saturation. The presence of characteristic hydrology is one of the three parameters used in the federal Section 404 definition of a wetland.

HYDROPHYTE: any plant successfully growing in water or in soil that is at least periodically deficient in oxygen as a consequence of soil saturation during some part of the growing season. Hydrophytes are those plants "typically adapted for life in saturated soil conditions"

(as referred to in the federal definition of wetlands (40 CFR 230.3[t])). The occurrence of wetlands vegetation, or hydrophytes, is one of the three required parameters in defining a wetland regulated under Section 404.

MEAN ANNUAL FLOW: the average amount of water that flows past a given point in one year.

MEAN HIGH WATER (MHW): the average height (over many years) reached by the high tides.

MITIGATION (*federal*): mitigation under NEPA includes: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments.

NATIONWIDE PERMIT: a general permit issued by the U.S. Army Corps of Engineers on a nationwide basis to authorize minor activities with little or no delay and paperwork. A few of the nationwide permits require notification prior to the proposed work. This notification is required where a review by the District Engineer is necessary to ensure that activities authorized by those Nationwide permits have minimal individual and cumulative adverse effects on the environment.

NAVIGABLE WATERS (*federal*): all presently, historically, and reasonably potential navigable waters and all waters subject to the ebb and flow of the tide up to mean high water in tidal water and up to ordinary high water in freshwater areas.

ORDINARY HIGH WATER MARK (OHWM) (*federal*): the point on the bank or shore to which the presence and action of surface water is so continuous as to leave a distinct mark by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. The OHWM defines the bed of a lake, river, or stream.

WATERS OF THE UNITED STATES (*federal*):

- 1) all waters that are currently used, or were used in the past, or may be susceptible to use, in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
- 2) all interstate waters, including interstate wetlands;
- 3) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:
 - a. which are or could be used by interstate or foreign travelers for recreational or other purpose or;
 - b. from which fish or shellfish are or could be taken and sold in interstate or foreign commerce or;
 - c. which are used or could be used for industrial

APA

Adirondack Park Agency

ASCS

U.S. Department of Agriculture Agricultural Stabilization and Conservation Service

COE

U.S. Army Corps of Engineers (Corps)

CFR

Code of Federal Regulations

CWA

Clean Water Act

CZMA

Coastal Zone Management Act

DEC

New York State Department of Environmental Conservation

DOS

New York State Department of State

EA

Environmental Assessment

EIS

Environmental Impact Statement

ENB

Environmental Notice Bulletin

EPA

U.S. Environmental Protection Agency

FONSI

Finding of No Significant Impact

NYCRR

New York Code of Official Rules and Regulations

NEPA

National Environmental Policy Act

NMFS

National Marine Fisheries Service

OHWM

Ordinary High Water Mark

SCS

U.S. Department of Agriculture Soil Conservation Service

SEQRA

State Environmental Quality Review Act

USFWS

U.S. Department of Interior Fish and Wildlife Service

WQC

New York State Water Quality Certification

U.S. ARMY CORPS OF ENGINEERS

Chief, Regulatory Branch
U.S. Army Corps of Engineers
New York District
26 Federal Plaza
New York, NY 10278
(212) 264-0184
[DEC Regions 1,2,3,4,5]

Chief, Regulatory Branch
U.S. Army Corps of Engineers
Buffalo District
1776 Niagara Street
Buffalo, NY 14207
(716) 879-4330
[DEC Regions 6,7,8,9]

Chief, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
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1000 Liberty Avenue
Pittsburgh, PA 15222
(412) 644-6872
[portions of Allegany, Cattaraugus,
and Chautauqua counties]

U.S. ENVIRONMENTAL PROTECTION AGENCY

U.S. Environmental Protection Agency, Region 2
Marine and Wetlands Protection Branch
26 Federal Plaza
New York, NY 10278
(212) 264-5170

U.S. FISH AND WILDLIFE SERVICE

United States Fish and Wildlife Service
Region V
300 Westgate Center Drive
Hadley, MA 01035
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NATIONAL MARINE FISHERIES SERVICE

National Oceanic and Atmospheric Administration's
National Marine Fisheries Service
Northeast Region
One Blackburn Drive
Gloucester, MA 01930
(508) 281-9300

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

State Executive Director
Agricultural Stabilization and
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(315) 423-5176

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (cont.)

New York State Department of Environmental
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Division of Water

Bureau of Flood Protection

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Regional Permit Administrator
NYSDEC, Region 8 Headquarters
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Regional Permit Administrator
NYSDEC, Region 9 Headquarters
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(716) 851-7165

Deputy Regional Permit Administrator
NYSDEC, Region 9 Suboffice
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